IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/09/2004

CORAM

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.10850 of 2004

Sri Balaji Educational and Charitable
Public Trust, represented by its
Chairman M.K.Rajagopalan
3-A, Jai Durga Complex
38/2, First Avenue, Ashok Nagar
Chennai-600 083. .. Petitioner

-vs-

Pondicherry University
represented by its Registrar
Kalapet
Pondicherry-605 014. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus to call for the records of the respondent-University relating to its orders in Ref.No.PU/AS-1/Aca-8/13/2003/MGMC&RI/112 dated 12.12.2003 PU/AS-1/Aca-8 /13/2003/MGMC&RI/141 dated 11.2.2004 and PU/AS-1/Aca-8/13/2003/MGMC& RI/161 dated 5.3.2004, to quash the same and to direct the respondent University to forthwith consider the request of the petitioner to grant affiliation for the B.Sc. (Nursing) course from 2003-2004 onwards and permit the students to take the examinations.

!For petitioner : Mr.K.Doraisamy
Senior Advocate for
M/s.Muthumani
Doraisami

^For respondent : Mr.K.M.Vijayan
Senior Advocate for
Mr.K.Srinivasan

:ORDER

The petitioner, a Charitable Trust, prays for a Certiorarified Mandamus to call for the records of the respondent-University relating to its

orders dated 12.12.2003, 11.2.2004 and 5.3.2004, to quash the same and to direct the respondent to forthwith consider the request of the petitioner to grant affiliation for the B.Sc. (Nursing) course from 2003-2004 onwards and permit the students to take the examinations.

2. The petitioner submits that the Trust had already established a Medical College at Pondicherry, which is functioning for more than three years with an attached Teaching Hospital. The college was established pursuant to the 'No Objection' Certificate granted by the Pondicherry Government and the permission given by the Medical Council of India and affiliated to the respondent University. In order to develop the Nursing Care Services side by side, the petitioner decided to start B.Sc. (Nursing) Course in the petitioner's college. The petitioner applied for Essentiality Certificate before the Government of Pondicherry as early as in the year 2001 and the Pondicherry Government granted its approval on 14.8.2003. On 14.8.2003 itself, the petitioner applied for 'No Objection' Certificate before the respondentUniversity for provisional affiliation of the course. Simultaneous applications were sent to the Indian Nursing Council and the Tamil Nadu Nursing Council for the inspection of the infrastructure available in the College. The Nursing Council of India conducted the inspection on 1 0.9.2003 and granted permission by their order dated 20.9.2003 for the Academic Year 2003-2004 with an intake of 60 students. Immediately thereafter, the Pondicherry Government allotted 30 candidates for admission into the course through CENTAC as against the Government quota free seats, on 27.9.2003. While admitting the said 30 students, the petitioner also filled up the remaining 30 seats as against Management quota. The admission of the students were completed within the last date prescribed for admission for all students, namely, 30.9.20 03 and the classes have also commenced. The petitioner further submits that on 22.9.2003, the petitioner had written to the University for the grant of affiliation for the Academic Year 2003-2004. As there was no response, another communication was sent on 23.10.2003.

3. The petitioner submits that on inspection, the Indian Nursing Council was fully satisfied about the availability of infrastructure as per their norms. As the admission had to be closed on or before 30.9 .2003 and as the Government of Pondicherry had allotted students under free category, it became necessary for the petitioner to admit the students anticipating the grant of affiliation by the University. The petitioner, having satisfied the requirements specified by the Indian Nursing Council, the petitioner bona fide thought that the affiliation was a matter of course. However, the petitioner was shocked to receive the order from the University dated 27.10.2003 refusing to grant affiliation on the technical ground that the application had not been submitted on or before 15.8.2002. In the same order, it was mentioned that the grant of provisional affiliation would be considered only for the Academic Year 2004-2005, subject to the Indian Nursing Council and the Tamil Nadu Nursing Council giving permission. As the objection of the respondent was not tenable, the petitioner submitted a detailed representation dated 10.11.2003, requesting the University to grant affiliation in view of the fact that students have already been admitted. In fact, the Pondicherry Government also, by their letter dated 8.12.2003, had requested the respondent to consider the grant of provisional affiliation for the Academic Year 2003-2004

by relaxing the statutory requirements, considering the fact that the students sponsored by CENTAC have already been admitted and were undergoing the course. However, by order dated 12.12.2003, the University once again declined the grant of provisional affiliation. Further representation dated 27.12.2003 by citing the request of the Pondicherry Government was also without any avail and the University, by its letter dated 5.3.2004, informed the petitioner that the decisions conveyed by the University through its earlier letters will continue to hold good. Aggrieved by the same, the petitioner has come forward with the above writ petition.

4. A counter affidavit has been filed by the University contending that the petitioner had first written to the University on 14.8.2003, informing that the Government had granted permission for the establishment of Nursing College under the Essentiality Certificate dated 14.8.2003 and that they will seek and apply for provisional affiliation after obtaining permission from the Nursing Council of India. In the said letter, the Trust did not inform their intention to start the College for the Academic Year 2003-2004. Even while sending the said letter, the Academic Year 2003-2004 had already commenced. The Essentiality Certificate issued by the Pondicherry Government was itself subject to the petitioner obtaining necessary sanction from the Nursing Council of India and the Tamil Nadu Nursing Council. It was only by the letter dated 4.9.2003, the petitioner had requested the University to furnish the required form to apply for affiliation. The said request itself was late by over one year for consideration of grant of affiliation for the Academic Year 2003-2004, for which the request should have been made on or before 15.8.2002 in terms of the statutory requirement of the University. It is true that the petitioner had informed about the fact of establishing the Nursing College and that the Nursing Council had permitted the intake of 60 students for the year 2003-2004. It is also seen from the letter of the Indian Nursing Council dated 20.9.2003 that the permission was subject to the approval by the State Nursing Council.

5. In the said background, by a letter dated 27.10.2003, the University had rightly informed the petitioner that the request for starting the course had not been sent on or before 15.8.2002 and therefore, the request would be considered only for the subsequent Academic Year. As regards the Government's direction to admit the students selected through CENTAC, the University had replied by their letter dated 12 .12.2003 stating that the request for starting the course for the Academic Year 2003-2004 cannot be considered, as the application was not received on or before 15.8.2002. The University had replied to the Government that relaxation of the statutory requirement was not feasible. It is further stated that the Tamil Nadu Nursing Council, by their letter dated 3.3.2004, had pointed out certain deficiencies as a result of the inspection and directed the petitioner to set right the deficiencies. Therefore, the petitioner-College had no right to admit the students without obtaining the approval of all the authorities concerned. It is further submitted that the eleventh hour approach of the petitioner was unacceptable. Even in the matter of coming before this Court, nothing prevented the petitioner from coming before this Court much earlier when the request was rejected by the University on 27.10.2003 itself and subsequently on 12.12.2003. Allowing the prayer of the petitioner would

undermine the legal mandate with which the University has acted and any relief to be granted in favour of the petitioner would nullify the statutory provisions.

6. An additional affidavit has been filed by the petitioner referring to the grant of affiliation for different courses in respect of various institutions run by the petitioners themselves in support of their contention that affiliation had been granted in those cases even though the applications had been forwarded only after 15th of August of the previous year. In the said context, the respondents have filed an additional counter affidavit denying the said details and stating that what was granted was only 'No Objection' Certificate and not grant of provisional affiliation.

7. Mr.K.Doraisami, learned senior counsel for the petitioner, contends that after the petitioner-Institution was fully equipped with all the infrastructural requirements, it was granted with the Essentiality Certificate on 14.8.2003 itself, with a permitted intake of 60 students. On the same day, the petitioner applied for 'No Objection' Certificate for provisional affiliation from the University. On 20.9.19 93, the Indian Nursing Council had granted is approval and on 22.9.1 993 and 22.10.1993, the petitioner had applied to the respondent for affiliation. In the meantime, the Government of Pondicherry had nominated 30 candidates for admission through CENTAC by their letter dated 27.9.2003. The Institution had, therefore, acted bona fide and had admitted a total number of 60 students. This was also followed by the Pondicherry Government itself making a request to the University to grant affiliation after explaining the circumstances under which the students have been admitted. Even so, the University had chosen to decline the request by quoting the provisions under the statute which had never been insisted upon or complied with.

8. Learned senior counsel also referred to few earlier instances referable to the petitioner institution itself, whereunder, according to him, affiliation had been granted by the same University even though the requirement now cited, namely, that the applications should have been made even during the previous year itself i.e., on or before 15 th August of the previous year was not fulfilled. Learned senior counsel further contends that the requirement thus insisted by the various authorities simultaneously are practically impossible for compliance and it has become the usual practice of the various authorities to cite some reason or the other, driving the applicant from one authority to the other. The University would say that they would consider the application only after approval by the Government, Indian Nursing Council and the Tamil Nadu Nursing Council, whereas, the other two authorities would say that they would consider the application only after the other authorities grant 'No Objection' Certificate or permission. With the result, the private institutions, even after they invest huge money, are put to untold misery and are expected to perform the impossible. It is only in appreciation of the plight of the educational institutions, the Supreme Court has observed in (1996) 8 SCC 3 30 (AL KARIM EDUCATIONAL TRUST V. STATE OF BIHAR) that if affiliation was being unnecessarily delayed, the Court can grant appropriate relief. Reference is also made to the observation that it is impracticable to insist on a fool-proof or absolute adherence to all the

requirements and that lapse of time call for urgent action and any delay would result in untold hardship.

9. Reference was also made to the judgment of S.S.Subramani,J. in W.P.No.1270 of 1999 dated 22.2.1999 - KOUSALYA RAMAMURTHY AND OTHERS V. PONDICHERRY UNIVERSITY, relying on the observation that all the authorities concerned should take simultaneous decision and one authority cannot delay the process and that when once AICTE has granted permission, the Management would be legally entitled to admit the students. In W.P.No.23925 of 2001 by order dated 22.3.2002 – AARU PADAI VEEDU MEDICAL COLLEGE V. PONDICHERRY UNIVERSITY, A.Kulasekaran,J. had observed that when once the Central Government has granted permission to admit the students, it was not right on the part of the University to prescribe a different period by rejecting the application for affiliation. In ST. XAVIER'S EDUCATIONAL TRUST V. MANONMANIAM SUNDARANAR UNIVERSITY AND OTHERS – W.P.No.20496 of 2000, by order dated 19.12.200 0, K.Govindarajan,J. directed the University to grant affiliation for the Academic Year 2000-2001, though the judgment was rendered on 19.12.2000.

10. In Writ Appeal Nos.181 and 464 of 1998, by judgment dated 12.8.1 998 – DR.M.G.R. MEDICAL UNIVERSITY V. VALLIAMMAL SOCIETY AND OTHERS), a Division Bench held that in order to protect the interests of the 100 students who had already been admitted, they were allowed to continue their studies, subject to the condition that the Selection Committee constituted by the State Government will allot 100 admissions only in the category of free seats. Learned

senior counsel also cited few instances of earlier grant of affiliation by the very same University/respondent and contended that the date particulars would disclose that the deadline for applications being filed on or before 15th August of the previous year was not strictly complied with.

11. Mr.K.M.Vijayan, learned senior counsel for the University, while denying the contentions raised on behalf of the petitioner, states that the University was bound by its statutes and regulations which clearly stipulate that applications seeking affiliation shall be filed on or before 15th of August of the previous year itself. It has been consistently held in many of the rulings of this Court and the Supreme that the University is entitled to act within its own sphere independently and to lay down the requisite norms and conditions for the grant of affiliation and that the affiliation is not to be granted automatically merely as a result of approval or permission granted by the other authorities. The fact that the Government had directed admission of students and had also made a request to the University to grant affiliation cannot alter the situation and the mandatory requirement of filing the application within a particular date. The said requirement was not a relaxable one. Therefore, it was not possible to comply with the request of the Government to relax the condition or to grant affiliation retrospectively. Learned senior counsel also took me through the provisions in the statutes of the University and the Regulations framed thereunder. Learned senior counsel further contends that the prayer in the writ petition was also unsustainable.

12. Learned senior counsel further states that the requirement was

not only to get approval from the Indian Nursing Council but also from the Tamil Nadu Nursing Council which was, admittedly, not complied with by the petitioner even as on the date of filing of this writ petition. In fact, certain defects have been pointed out by the Tamil Nadu Medical Council after they conducted the inspection and the petitioner was directed to rectify the defects by the letter of the Tamil Nadu Nursing Council dated 3.3.2004. The permission was granted only on 11.5.2004. Therefore, apart from the non-compliance of the date by which the application should have been forwarded, even the requirements of approval by the Tamil Nadu Nursing Council had not been obtained by the petitioner, even at the time of filing of the writ petition. It is further contended that in terms of Statute 32(1)(iii), no College or Institution shall be admitted to any privileges without a report of a Committee of Inspection appointed for the purpose by the Academic Council. Under Statute 32(1)(iv), Colleges and Institutions desirous of admission shall be required to intimate their intention to do so in writing so as to reach the University not later than 15th of August preceding the year for which permission was applied for.

13. As regards the discrimination alleged, learned senior counsel contends that the instances cited on behalf of the petitioner relate only to the grant of 'No Objection' Certificate and not the grant of affiliation. Assuming that one or two instances can be cited, the same cannot operate as an estoppel against the University. Granting of such permission, if any, can be treated only as a mistake or illegality and cannot certainly justify all such requests which are positively inconsistent with the statutes of the University.

14. In dealing with the contention of the petitioner that students have already been admitted, learned senior counsel contends that the Supreme Court had come down heavily on such pleadings and sympathy being shown by the

Courts by ignoring the fact of illegality, vide the following judgments:
(i) (1986) 2 SCC 667 (A.P. CHRISTIANS MEDICAL EDUCATIONAL SOCIETY V. GOVERNMENT OF A.P.)
(ii) (1991) 3 SCC 87 (STATE OF TAMIL NADU V. ST.JOSEPH TEACHERS TRAINING INSTITUTE); and
(iii) (1998) 5 SCC 377 (C.B.S.E. V. P. SUNIL KUMAR).

15. In reply, Mr.K.Doraisamy, learned senior counsel, contends that the Supreme Court had pointed out in (1996) 8 SCC 330 (AL KARIM EDUCATIONAL TRUST V. STATE OF BIHAR) that it will not be possible to satisfy all the requirements in the beginning itself when the Institution is at an infant stage. Learned senior counsel contends that only because of the prevailing practice, the State Government had allotted seats and requested the university to grant affiliation.

16. I have considered the submissions of both sides.

17. The following date particulars would be relevant for considering the issues arising for decision in this petition:

The petitioner Institution is already running a Medical College and for the purpose of developing nursing care services, had applied for Essentiality Certificate from the Government of Pondicherry during the year 2001 itself. On 14.8.2003, the Government issued Essentiality Certificate and on the same day, the petitioner had informed the University of the same and had requested the University to grant 'No Objection' Certificate for the provisional affiliation. Permission was also granted by the Indian Nursing Council on 10.9.2003 for starting the course with an intake of 60 students for the Academic Year 2003-2 004. The Government also allotted/nominated 30 students to be admitted under the free category selected through CENTAC by letter dated 27 .9.2003 as the last date for admission for the Academic Year 2003-200 4 was 30.9.2003. The college had admitted a total number of 60 students inclusive of 30 students, as directed by the Government. Even before such admission, the petitioner college, by their letter dated 22 .9.2003, had requested the University for the grant of affiliation, followed by another request on 23.10.2003, also informing the University that students have already been admitted. Though the petitioner had simultaneously applied for approval before the Tamil Nadu Nursing Council, certain defects were pointed out by the Tamil Nadu Nursing Council on 3.3.2004, and finally, approval was granted on 11.5.2004.

18. The above facts are not in dispute. In this background, the question which arises for consideration is as to whether the University was justified in declining affiliation only on the ground that the application for affiliation had not been forwarded on or before 15.8.20 02 itself, as required under the Pondicherry University Act and the statutes. It is true that in terms of Statute 32(1)(iv), the colleges are required to intimate their intention to do so in writing so as to reach the Registrar of the University not later than 15th August of the previous year for which permission is applied for.

19. It is true that in strict terms of the statute, for the Academic Year 2003-2004, application for affiliation should have been made on or before 15.8.2002. The fact that the University had been granting affiliation without strict adherence to the said time frame (though disputed by the University) on any earlier occasion, cannot, by itself, give a right to the petitioner to violate the requirements, as rightly contended by the learned senior counsel for the University. The fact that the University had on one or two earlier occasions not strictly enforced the said requirement cannot estop the University from enforcing the Regulations subsequently. This might depend upon the attitude of the concerned authority of the University to stand by the statute and no exception can be taken to the views of the appropriate authority to strictly go by the letter and spirit of the statutes governing the University. None of the observations of the Supreme Court in the judgment reported in (1996) 8 SCC 330 (AL KARIM EDUCATIONAL TRUST V. STATE OF BIHAR) cited above can really come to the rescue of the petitioner as long as the University seeks to enforce its Regulations. The observations of the Supreme Court adopting a liberal approach while dealing with the requirements envisaged by the various authorities involved in the process of granting affiliation or permission have to be applied only in the factual background of the cases decided by the Supreme Court and not as giving a licence to the

applicants to violate the statutory requirements or for the Court to ignore such requirements. On the facts of the case decided by the Supreme Court, the requirements to be complied with were found to be minor defects and also the attitude of the authorities in projecting new deficiencies each time after the old deficiencies had been rectified. However, notwithstanding the fact that the petitioner had not applied for affiliation on or before 15.8.2002, the peculiar facts of the case stated below warrant for a sympathetic approach:
(i) The requirement of the date deadline does not appear to have been strictly insisted upon in the past at least in some of the cases as pointed out by the petitioner. For instance, in the case of the petitioner-Institution itself, for their proposed Engineering College at Karaikal for the Academic Year 1997-98, the Government had given clearance only on 14.3.1997 and the application for affiliation was made only on 15.3.1997. The respondent University, by order dated 24.4.1 998, granted provisional affiliation for the Academic Year 1997-98. Likewise, while starting Mahatma Gandhi Medical College, Pondicherry, for the Academic Year 2001-2002, application to the University for 'No Objection' Certificate was made on 21.8.2000 and the application for affiliation was made on 11.6.2001. By order dated 9.8.2002, the respondent had granted affiliation for the Academic Year 2001-2002. Some of the other instances pointed out by the petitioner are of no help to the

petitioner, as they deal only with the grant of 'No Objection' Certificate and not provisional affiliation or the order of affiliation having been granted on direction from Court. As I have already pointed out, the fact of a few earlier instances of the date deadline not having been strictly complied with alone cannot estop the authority from seeking to enforce the statute in a proper manner subsequently. Yet, I had referred to such instances only to bear in mind the manner in which such requests have been entertained by the University itself and how the University itself had been approaching the issue in the past, which would consequently justify a sympathetic approach, provided there are also other circumstances weighing in favour of the Institution.
(ii) It is not the case of the University that any other default or deficiencies had come to their notice and such defects remain unrectified. The only deficiency pointed out in the impugned order is the non-compliance of the time limit by which the application should have been filed.
(iii) The Government of Pondicherry had issued directions instructing the petitioner Institution to admit 30 students selected through CENTAC, which direction could not have been disobeyed by the petitioner.
(iv) Pursuant to the said directions, students have been admitted and are undergoing studies.
(v) The Government itself had requested the University to relax the condition of time limit for affiliation, in view of the peculiar circumstances. It is true that the University is an autonomous body and the respondent University deserves to be appreciated for dealing with the issue very independently and not being dictated by the Government. But the University could have applied its mind independently, considering the plight of the students who have been admitted on the directions of the Government.
(vi) The reason for refusal to grant affiliation is not because that there was any deficiency or defect in the infrastructural requirements for running

the Institution, in which case, public interest may be stated to be involved. In the present case, the only defect is not having forwarded the application on or before 15th of August of the previous year.
(vii) The situation faced by the petitioner Institution is the outcome of defects in the very system, requiring the approval/permission from various authorities, one after the other. In this case, the petitioner has sought for Essentiality Certificate in the year 2001 itself. If only the applicants are entitled to approach all the authorities simultaneously, as they should be, such anomalous situations could be avoided.
For all the above-said reasons and bearing in mind the plight of the students who have been admitted on directions from the Government, the writ petition deserves to be allowed.

20. While parting with this case, it would be appropriate to place on record the total unsustainability of the methodology adopted by the various authorities who are involved in the grant of permission/ sanction/affiliation, etc., for starting a professional college/courses, namely, Medical, Dental, Nursing, Teachers' Training, Engineering, Technical, etc. When the Government is not able to run such educational institutions and the right of education being recognised as a fundamental right, the need of imparting education through private sector had become inevitable and a recognised feature. But, in order to see to it that the private sector does not exploit the situation commercially and in an unconscionable manner and to ensure proper standards, many regulations have been formulated to control the fee structure, to ensure all infrastructural facilities, staff pattern, etc., before and after the institution is allowed to admit the students and commence its functioning. In the said process, necessarily different authorities are involved such as Central and State Governments, Governing Councils like the Medical Council, Dental Council, AICTE, etc., and the University. No doubt, these authorities have to act independently in their own spheres and according to their own standards. But it should not be forgotten that they are statutory authorities discharging the functions of one single entity, namely, the Sovereign Government. The various authorities above-mentioned are part and parcel of that single entity and they function differently only for administrative reasons and due to division of labour. But the unfortunate outcome of such division of labour is the impossible and impracticable situations and requirements which the applying institution has to face for establishing itself. Which authority is to be approached first, second, third or last is a question which no one can answer. But one thing is sure. "A" authority would require the approval by "B", "C" and "D" authorities, while "B" authority would require approval/ permission by the other three authorities and likewise in the case of "c" and "D" authorities. I ask
myself the question as to how this could be possible at all and where is the need for such a requirement. The applying institution is expected to successfully complete this jugglery, after having invested several lakhs of rupees only to find at last being told that students cannot be admitted for the particular academic year. This situation inevitably leads to red-tapism, corruption, favouritism and inconsistent orders being passed in favour of and against different institutions by adopting different yardsticks. This rigmarole is going on for the past many years, flooding the Courts with petitions where it is also found that innocent students are caught in this

confusion. They already have a frightening and competitive future ahead of them and even at the threshold of their professional education, they are subjected to painful suspense and many times, are forced to loose money and valuable years when they are told that the institution in which they are admitted is not yet recognised or affiliated. Take for instance this case itself where the Government of Pondicherry itself directs the college to admit the students, while the University states that they cannot affiliate, as the application was belated. If only simultaneous applications are made possible, this problem would not have arisen at all. When the petitioning college is required to approach the University only after the Essentiality Certificate is given by the Government, it results in unnecessary delay and the requirement that the application for affiliation should have been made on or before 15 th of August of the previous year itself is rendered impossible. Further, it is also seen that while the Indian Nursing Council grants permission on 20.9.2003, the Tamil Nadu Nursing Council points out certain defects and ultimately grants its approval only on 11.5.2004. It is baffling to find that both the Nursing Councils should be involved though they operate only on the same field, but both of them have different approach regarding the infrastructural requirements.

21. Who is responsible for this situation and is it such a complicated issue to evade solution by the educational authorities? It should be certainly possible to evolve a methodology by which the applying institution would be required to present its application before all the authorities simultaneously, something in the nature of a single window system and a time limit for all the authorities to pass orders or directions to rectify the defects, if any, and to comply with the requirements.

22. It was rightly pointed out by S.S.Subramani, J. in W.P.No.1270 of 1999 by order dated 22.2.1999 cited above, that each authority cannot postpone the matter of taking decision according to their convenience which will make the establishment of the college impossible and that on going by the scheme, it was clear that all the authorities have to take decision simultaneously and there must be coordination between themselves. The practice of pointing out new defects in subsequent orders has also been deprecated by the Supreme Court in (1996) 8 SCC 330 (AL KARIM EDUCATIONAL TRUST V. STATE OF BIHAR). Though the said observations have been made by this Court and the Supreme Court several years earlier, the same situation continues.

23. It is true that many educational institutions manage to come up without even the basic infrastructural facilities, but are armed with the approval by the relevant authorities. It is also equally true that some institutions, even after fulfilling the requirements, are unable to start the courses. The reasons are not difficult to guess.

With the result, the writ petition is allowed and the University is directed to issue the order of provisional affiliation to the petitioner for the Academic Year 2003-2004, subject to the usual conditions. Consequently, W.P.M.P.Nos.12708, 21921, 21922 and 23024 of 2004 are closed.

Index : Yes
Internet: Yes

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